

While I certainly recognize the fact that content providers have an interest in preventing piracy of their products, I do not believe that the protection scheme that is proposed will meet this need, but it may impair copying under the fair-use guidelines and may needlessly complicate how the whole system works.

Consider that DVDs have not had effective copy-protection for the entire time they have been popular on the market. The DVD Content Scrambling System - whose hardware support is mandated by a industry consortium - was broken around the time when DVDs just began to gain in popularity. Several years have passed, and yet we do not see movie retailers going out of business. Indeed, the market for DVDs has grown tremendously quickly - especially considering that the VCR technology that it replaces is already so well established and despite the fact that consumers who buy DVD players cannot use them to record shows.

In the same way, no matter what protections are required by law, somebody will be able to extract the digital broadcast stream from an HDTV broadcast. Since serial digital copying is flawless it only takes one act of extraction to make millions of perfect copies. Even if the hardware necessary to perform the first extraction is expensive it needs to be done only once. At that point consumers will have a choice of using legitimate broadcasts whose use is partially-impaired due to the copy-protection restrictions, or illegitimate copies whose use is unimpaired.

Software makers used to widely use copy-protection technology and have largely given up on it. Most consumers associate copy-protection with inconvenience, and yet most pirates usually find disabling these technologies only mildly inconvenient. Indeed many otherwise legitimate consumers may obtain copy-protection circumvention software merely to disable the inconvenient aspects of protected software that they legally purchased (such as having to have a CD in a drive to use a program).

Clearly companies that mass-distribute pirated material should be raided, and copyright laws should be enforced. However, using hardware to perform this act usually results in more inconvenience than real protection.